positions we must, with all deference, dissent. The noise and jar of the ordinary electric cars, often joined in trains, the speed with which they run, the danger of driving along and upon the tracks, or even across them, the risk of injury or death from contact with broken wires, the unsightliness of the poles and cars and cross-wires and guard-wires and trolley-wires, are all matters of common knowledge.

That telegraph and telephone poles are an additional servitude is fairly well settled,[1] the cases to the contrary, such as *Pierce* v. *Drew*,[2] in Massachusetts, being based on highly artificial analogies between the ancient and modern use of highways for purposes of communication. To avoid this class of decisions, the Michigan court would say, with the Supreme Court of Rhode Island,[3] that telegraph and telephone wires are only very indirectly used to facilitate the use of streets for travel and transportation, whereas the poles and various wires of the electric railroad are distinctly ancillary to the use of the streets as such. This distinction is, as Judge Dillon remarks, "so fine as to be almost impalpable."[4]

It is said that the streets of a city may be used for any purpose which is a necessary public one, and the abutting owner will not be entitled to new compensation, in the absence of a statute giving it. As it stands, this statement can scarcely be maintained. Granting that the abutting owner dedicates to the public the whole beneficial use of part of his land for the purposes of a street, his property rights of light, air, and access free from danger to his remaining land still subsist. Surely the need of the public for steam railroads is much greater than its need for electric railroads; yet steam railroad corporations would not be allowed to run their trains on public streets merely as a new method of using an old easement, and if they would lay their tracks across lands not belonging to them, they must obtain the right to do so by purchase or condemnation, into which consequential damages enter as an element. The need of the public is to be considered when the right to take the property is under consideration, and not when the courts have to decide whether compensation shall be allowed.

If the public needs a new method of transportation, the public can and should pay for private property rights destroyed or impaired in establishing that new method of transportation.

THE SEVENTEENTH SECTION OF THE STATUTE OF FRAUDS. — Iowa has the seventeenth section of the Statute of Frauds, but with the limitation that it shall not apply "where the article of personal property sold is not, at the time of the contract, owned by the vendor, and ready for delivery, but labor, skill, or money are necessarily to be expended in producing or procuring the same." Code, § 3665. The construction of this article came squarely before the Supreme Court of Iowa for the first time in the case of *Mighell* v. *Dougherty*, 53 N. W. Rep. 402. Here the defendant orally contracted to deliver to the plaintiff, in a marketable condition, the oats then standing unthreshed in the defendant's field. For delivery in such condition, the expenditure of labor, skill, and money was necessary; but was it necessary, within the meaning of the exception, for "producing or procuring and making ready for delivery"?

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[1] See 2 Dillon on Mun. Corp., § 698 *a*, and cases cited.
[2] 136 Mass. 75.
[3] Taggart *v.* Ry. Co. (R. I.), 19 Atl. Rep. 326.
[4] 2 Dillon on Mun. Corp., p. 893, *n.*

It was held that cutting and putting into marketable condition was not a producing, which means "giving being or form to," "manufacturing," "making;" nor a procuring, which means "bringing into possession," "obtaining." Furthermore, the court say this was work which the vendor would naturally take in fitting his material for the general market.

It seems probable that this limitation was inserted to avoid the perplexities of the New York rule, *Parsons* v. *Lonts*, 48 N. Y. 652, that the statute does not apply when the chattel is not in existence at the time of making the contract, and to avoid the curious, if just, rule of Massachusetts, *Goddard* v. *Binney*, 115 Mass. 450, that if the vendor makes or prepares for the general market, it is a sale within the statute, and if he makes or prepares to special order, not as he would in the general nature of his trade, it is not a sale within the statute. The latter is a clear case of reading into the statute clauses which the words cannot possibly contain. The former, the New York rule, is based on the earlier English cases, but has not advanced as the English doctrine advanced.

The principal case is another example of the tendency to force from this section an equitable doctrine. But by such a decision the heart of the provision is eaten out. After viewing the attempts of various American jurisdictions to hammer strained rules out of the statute, it is a relief to consider the more natural and literal interpretation of the English courts, *Lee* v. *Griffin*, 1 B. & S. 272, that any contract which is to result in the sale of a chattel is within the statute; or the wisdom of some legislatures, *e. g.* Ohio, in entirely omitting the seventeenth section from their Statute of Frauds.

WINDSCHEID AND v. IHERING.[1] — German legal circles have sustained an irreparable loss in the last two months in the deaths of v. Ihering and Windscheid. The former was perhaps the better known in foreign countries; the latter influenced the development of German law as no other writer in the past twenty-five years.

Rudolph von Ihering gathered around him in his retirement at Göttingen an enthusiastic audience to listen to his brilliant discourses and to participate in the discussions of legal questions. His little book, "Jurisprudence of Daily Life," contains a multitude of hypothetical cases of every-day occurrence such as he was wont to put in his classes. In Göttingen, too, he found the necessary peace and quiet to develop and improve his great work on the "Spirit of the Roman Law," — a work that in these days of Roman law studies well deserves the honor of a translation into English. Ihering's was a philosophical nature; his field of work lay in the domain of the philosophy of the law. The indefiniteness and vagueness incidental to the vastness of philosophical research permeated his writings: his great knowledge of the law itself, in its origin, growth, and development, acted as a corrector: his style attracted the thoughtful reader, even the layman, and thus he did much to popularize the study and the knowledge of law. As editor of the leading law quarterly on Roman law, he contributed much to the solution of practical legal questions. But one of his essays, I believe, has been translated into English, "The Battle for Law," a brilliant plea for the maintenance of principle and individual right, at whatever cost, as the chief factor in the

[1] We are indebted for this note to Julian W. Mack, Esq., of the Chicago bar.